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# Supreme Court of the United States

October Term, 1974

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NATIONAL LEAGUE OF CITIES, *et al.*,
*Appellants*

v.

PETER J. BRENNAN, SECRETARY OF LABOR
*Appellee.*

STATE OF CALIFORNIA,
*Appellant*

v.

PETER J. BRENNAN, SECRETARY OF LABOR
*Appellee.*

**On Appeal from the United States District Court for the District of Columbia**

## MEMORANDUM OF AFL-CIO, et al. (Applicants for Intervention and Amici Curiae) IN SUPPORT OF MOTION TO AFFIRM

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## MEMORANDUM OF AFL-CIO, et al. (Applicants for Intervention and Amici Curiae) IN SUPPORT OF MOTION TO AFFIRM

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This memorandum in support of the Government's motion to affirm in the above noted cases is filed by the AFL-CIO, the International Association of Fire Fighters, the American Federation of State, County and Municipal Employees, the Service Employees' International Union, the International Union of Operating Engineers, the American Federation of Teachers and the National Education Association. On January 8, 1975, these organizations jointly filed with this Court a motion to intervene. While no opposition

has been lodged to that motion, it has not yet been acted on. The AFL-CIO, et al., have therefore also secured leave to participate as *amici curiae* in the event the motion to intervene should be denied.

## INTEREST OF THE AFL-CIO, ET AL.

The American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") is a federation of 111 national and international labor unions that have 13,500,000 members, approximately 1,250,000 of whom are employees of state and local governments covered by the 1974 amendments to the Fair Labor Standards Act (hereafter "1974 amendments" and "FLSA"). (Public Law 93-259, 88 Stat. 55, amending 29 U.S.C. §§ 201 *et seq.*). The International Association of Fire Fighters ("IAFF") is a labor organization with 170,000 members, most of whom are employed by state or local governments. The American Federation of State, County and Municipal Employees ("AFSCME") has approximately 700,000 members who are employees of state and local governments. The Service Employees International Union ("SEIU") is a labor organization with 550,000 members approximately 200,000 of whom are employed by state and local governments. The International Union of Operating Engineers ("IUOE") is a labor organization with 350,000 members, 30,000 of whom are employees of state and local governments. The American Federation of Teachers ("AFT") is a labor organization with 325,000 members who are employees of state and local governments; its non-professional members are covered by the 1974 amendments. The National Education Association ("NEA") is an organization representing 1,400,000 professional and non-professional educational



personnel who are employees of state and local governments, the latter being covered by the 1974 amendments.

The AFL-CIO, *et al.*, have determined to participate in this case for two basic reasons. First, and most obviously, they are the freely selected representatives of millions of public employees directly affected by the 1974 Fair Labor Standards Act amendments, the validity of which is at issue here. As such, these organizations supported the 1974 amendments in the vigorous debate that surrounded their consideration and eventual adoption by the Congress. They have concluded that they would be derelict in their duty to their members if they were to abandon the matter now that the appellants have transferred their opposition from the Legislative Branch to this forum.

Second, it is the conviction of the AFL-CIO, *et al.*, that working men and women, whether employed by a private or public employer, and whether they have chosen to be represented in dealing with their employer or not, deserve a living wage for their labor. Yet, in 1973 approximately 409,000 State and local government employees were paid less than $1.90 an hour [1]—at a time when the poverty level income for an urban family of four was $4,540 or approximately $2.27 an hour.[2] That is a national disgrace which fully warranted the national corrective enacted by Congress.

## QUESTIONS PRESENTED

Ordinarily, we would not attempt to rephrase the Questions Presented for review by an appellant. With respect

[1] See *Background Materials on the Fair Labor Standards Act Amendments of 1973*, 93d Cong., 1st Sess., p. 220; H. Rept. 93-913, 93d Cong., 2d Sess., p. 28.

[2] S. Rep. 93-690, 93d Cong., 2d Sess., p. 8.

to these appeals, however, it is necessary that we do so in order to clarify which issues are really here. The National League of Cities (hereafter "League") sought in the complaint an order declaring the 1974 amendments to be unconstitutional in their entirety insofar as they are "applied to States, Cities and public subdivisions of States" and for interlocutory, preliminary and permanent injunctions against enforcement of those provisions; its Application for a Stay in this Court is, if possible, even more sweeping. Yet the League appears to have abandoned some of the constitutional objections it raised below.[3] Moreover, the single Question Presented by California is based on the inaccurate factual premise that the 1974 amendments brought "all" public employees under the FLSA (Cal. J.S. 3). We believe the following fairly states the issues which are before the Court in light of appellants' phrasing of the Questions Presented and their Rule 15(1)(f) "statement of reasons why the questions presented are so substantial as to require plenary consideration".

1. Are the Fair Labor Standards Act Amendments of 1974, Public Law 93-259, 88 Stat. 55 unconstitutional in that they:

   a. Raise the minimum wage payable to public employees whose coverage under the Fair Labor Standards Act was sustained as a constitutional exercise of the commerce power in *Maryland* v. *Wirtz*, 392 U.S. 183;

   b. Bring within the minimum wage and maximum hour provisions of the Fair Labor Standards Act certain public employees not previously covered;

   c. Allow suits by public employees against their employers for monies withheld in violation of the Fair Labor Standards Act?

2. Is the decision of the above questions inappropriate in whole or in part, in this action for a declaratory judgment and injunctive relief?

[3] For example, in the court below the League contended that the 1974 Amendments were unconstitutional in that they authorized the Secretary of Labor to bring a suit against states for double damages, attorneys' fees, etc.; and in their Application for a Stay they seek to enjoin suits by the Secretary. However, the League's Sixth Question Presented challenged the constitutionality only of enforcement suits brought by employees (NLC J.S. p. 4). There is also nothing in the League's Jurisdictional Statement (or that of California) which challenges the 1974 amendments insofar as they make the Equal Pay Act (57 Stat. 56, 29 U.S.C. § 2066) and the Age Discrimination in Employment Act of 1967 (81 Stat. 602, 29 U.S.C. § 621 *et seq.*) applicable to the States and their political subdivisions.



## ARGUMENT

### I. The Present Case Is Controlled In All Its Particulars by *Maryland* v. *Wirtz*, 392 U.S. 183.

In *Maryland* v. *Wirtz*, 392 U.S. 183, 187, this Court sustained the constitutionality of the 1966 amendments to the Fair Labor Standards Act of 1938 (FLSA), which "modified the definition of 'employer' so as to remove the exemption of the States and their political subdivisions with respect to employees of hospitals, institutions, and schools." In considering whether the present appeals raise any issues warranting plenary review by this Court, it is essential to bear in mind both what the Court decided in *Maryland* v. *Wirtz* and what it deliberately chose not to decide. The

Court decided: first, that the FLSA's "enterprise" test for determining coverage is a legitimate exercise of the commerce power (392 U.S. at 188-193); and second, that the application of the FLSA to employees who are engaged in commerce in the constitutional sense is not barred because the employer is a state or a subdivision of a state (*id.* at 193-199). The Court also held that it would be inappropriate to decide two other questions raised by the states: whether, insofar as § 16(b) of the Act appeared to permit suits by employees against states to recover unpaid minimum wages or overtime compensation it violated the Eleventh Amendment (*id.* at 199-200); and whether "in the abstract and in general • • • schools and hospitals have employees engaged in commerce or production" (*id.* at 200-201).[4] We submit that the broad constitutional argument advanced by the appellants herein is identical to and indistinguishable from the constitutional argument rejected in *Maryland* v. *Wirtz*, and that in their details the appellants' objections to the statute are premature for the reasons stated in that case.

a. The 1974 amendments increased the minimum wage payable to all covered employees. Among the beneficiaries of this across-the-board increase were public employees of schools and hospitals who are covered under the 1966 amendments, sustained in *Maryland* v. *Wirtz*. It is uncertain whether the appellants herein are challenging the constitutionality of that increase; see p. 3 n. 3, *supra*. In any event, such a constitutional challenge would be frivolous. The validity of an exercise of the commerce power in establishing minimum wages does not depend on the amount of the legislatively established wage.

b. It is quite incorrect to assert, as does California, that the 1974 amendments expand the reach of the FLSA so as to cover "all" state and local employees (Cal. J.S. pp. 3, 6, 10); and the League's assertion that 11 million employees are affected (NLC J.S. p. 5) is an exaggeration of approximately 100 percent. For, the 1974 amendments retain the earlier exemptions (expressly adverted to in *Maryland* v. *Wirtz*, 392 U.S. at 193) of any "employee employed in a bona fide executive, administrative, or professional capacity." Consequently, whereas the 1966 amendments brought 2.9 million public employees under the FLSA, the 1974 amendments affect an additional 3.4 million. Unless there is some impenetrable constitutional barrier determined by the number of employees covered beyond which Congress may not constitutionally provide minimum wages and maximum hours, it is too plain for argument that *Maryland* v. *Wirtz* cannot be distinguished on the ground that Congress increased the FLSA coverage of public employees working in enterprises "in commerce."

c. While a substantial part of both jurisdictional statements emphasizes the fiscal problems which the 1974 amendments raise for the states and their subdivisions, it is plain that this is not a constitutionally viable basis for distinguishing *Maryland* v. *Wirtz*.

1. It is perhaps sufficient that in *Maryland* v. *Wirtz* itself the states unsuccessfully made like predictions of

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[4] The Court noted:

"Whether particular institutions have employees handling goods in commerce, cf. Walling v. Jacksonville Paper Co., 317 U.S. 564, may be considered as occasion requires." *(Id.)*

fiscal catastrophe if the constitutional validity of the 1966 amendments were sustained.[5]

2. The objection that the 1974 amendments "transfer control of City and State budgets—and with it control of budgets, control of City and State Governments themselves—to federal officials and employees who are neither elected from nor residents of the Cities and States they will control" (NLC J.S. p. 15) presupposes that but for those amendments the cities and states would be autonomous masters of their own fiscal fortunes. That supposition would probably have been a romantic illusion even in 1790. It certainly bears no relation to reality today. The principal determinants of the economic situations of the cities and states are the decisions of how the national economy is to be managed, who is to be taxed by the federal government and how much, and the proportion if any of the resulting federal revenues that are to be granted to the cities and states.[6] As those who replaced the Articles of Confederation with the Constitution intended, these decisions are made by Congress, which is their chosen instrument for exercising "the vast expanse of federal authority over the economic life of the new nation" (*Maryland* v. *Wirtz*, 392 U.S. at 196). Under the scheme of the Constitution, the states' protection against Congressional excesses in the exercise of the commerce power is that the Senators and Representatives

[5] See Brief of Appellants (Maryland et al.) No. 742, Oct. term 1967, pp. 49, 50, 51, 55; Brief for Appellant (State of Texas), *id.*, pp. 18-19.

[6] In 1973 the Federal Government provided over $43.9 billion to the states, and in 1974 it contributed over $46.0 billion. Federal Aid to States for Fiscal Year 1974, p. 1 (Fiscal Service Div. Bureau, Gov't. Operations, Department of the Treasury).



are chosen by the states and the people of the states. James Madison stated:

> "[A]s a security of the rights and powers of the states in their individual capacities ag[ainst] an undue preponderance of the powers granted to the Government over them in their united capacity, the Constitution has relied on 1. The responsibility of the Senators and Representatives in the Legislature of the U.S. to the Legislatures & peoples of the States. 2. The responsibility of the President to the people of the U. States; & 3. The liability of the Ex. and Judiciary functionaries of the U.S. to impeachment by the Representatives of the people of the States, in one branch of the legislature of the U.S. and trial by the Representatives of the States, in the other branch; the State functionaries, Legislative, Executive & judiciary, being at the same time in their appointment & responsibility, altogether independent of the agency or authority of the U. States."[7]

That Congress has met, and not abused, its "responsibility * * * to the legislatures and peoples of the States" in passing the 1974 amendments is manifest since they merely provide state and local employees with the same protections enjoyed by federal (as well as private) employees doing comparable tasks. As the Senate Report stated:

> "The Committee intends that government apply to itself the same standards it applies to private employers. This principle was manifested in 1972 when the Senate overwhelmingly voted to apply Federal equal employment opportunity standards to public sector employers. Equity demands that a worker should not be

[7] 9 Writings of James Madison 383, 395-396 (Hunt ed. 1910), quoted in Wechsler, *The Political Safeguards of Federalism*, 54 Colum. L. Rev. 543, 558-559 (1954).

> asked to work for subminimum wages in order to subsidize his employer, whether that employer is engaged in private business or in government business." (S. Rep. 93-690, 93d Cong., 2d Sess., p. 24.)

3. The League asserts that Congress was misled with respect to the costs which expansion of coverage would impose on the states and cities. As the government demonstrated at its Memorandum in Opposition to a Stay, this statement is inaccurate. The League's argument is improper also because it invites this Court to review Congressional findings, as if they were those of some subordinate tribunal. As was said in *Maryland* v. *Wirtz*, "We are not concerned with the manner in which Congress reached its factual conclusions" (392 U.S. at 190, n. 13).

4. Although appellants rely on *Employees* v. *Missouri Public Health Dept.*, 411 U.S. 279, that case actually reinforces the proposition that their fiscal impact arguments are without constitutional merit:

> "Where employees in state institutions not conducted for profit have such a relation to interstate commerce that national policy, of which Congress is the keeper, indicates that their status should be raised, Congress can act. And when Congress does act, it may place new or even enormous fiscal burdens on the States." (*Id.* at 284.)

5. As early as *Sanitary District* v. *United States*, 266 U.S. 405, followed in *Maryland* v. *Wirtz*, 392 U.S. at 195, an exercise of the federal commerce power was sustained despite the assertion that it would cost the City of Chicago alone $100,000,000 (see 266 U.S. at 431), and although the Court acknowledged that the case "concerns the expenditures of great sums and the welfare of millions of men" (*id.* at 425). Mr. Justice Holmes said:

> "But cost and importance, while they add to the solemnity of our duty, do not increase the difficulty of decision except as they induce argument upon matters that, with less mighty interests, no one would venture to dispute." *(Id.)*

So here.

d. The major asserted basis for distinguishing *Maryland* v. *Wirtz* is that whereas public schools and hospitals are in competition with private schools and hospitals, other public employees are not in competition with private industry (NLC J.S. 12-14, 22-25, 28, 32; Cal. J.S. 3, 10). This contention misconceives the realities of competition between the private and the public sectors, and, more significantly, misreads *Maryland* v. *Wirtz*.

1. It is patent that many other public services compete with the private sector to at least an equal extent as do public schools and hospitals. A few examples will suffice. Appellants object specifically to the coverage of fire fighters, but many fire fighters are employed by private industry, as the leading FLSA case of *Skidmore* v. *Swift & Co.*, 323 U.S. 134, and its companion, *Armour & Co.* v. *Wantock*, 323 U.S. 126, illustrate. Again, many industries provide their own police protection and guard services, a practice which local governments commonly support by officially deputizing the private guards; see, *e.g.*, *Griffin* v. *Maryland*, 378 U.S. 130. Examples could be multiplied, but they need not be. For, if it were constitutionally necessary to establish that a particular public employee added to the FLSA is or is not in competition with private industry, this would,

under *Maryland* v. *Wirtz*, 392 U.S. at 201, be a matter for case-by-case adjudication. Even on appellants' legal theory, the fact that some employees are in such competition is sufficient to preclude a judgment that the 1974 amendments as a whole are unconstitutional insofar as they expand coverage.

Further, it should not be forgotten that the states and particular subdivisions within states are in a very real sense in constant economic competition with each other. Thus, states and other public bodies advertise to attract new industries, new residents and tourists. Lower taxes and other monetary incentives are commonly offered. Regulation of such competition to assure that it is not waged by paying employees at a poverty level is indistinguishable in constitutional terms from regulation designed to assure that companies in private industry do not secure an advantage by affording their employees substandard conditions.

2. More fundamentally, the existence of competition with private industry was not regarded in *Maryland* v. *Wirtz* as a prerequisite for Congressional regulation under the commerce power of the wages of public employees. Rather, it was merely one of two independent grounds for determining that the FLSA can constitutionally be applied to an entire enterprise rather than to those employees only who are themselves engaged in commerce or in the production of goods for commerce. See 392 U.S. at 188-191. The other, "wholly different line of analysis" which was held to support the enterprise concept is that "substandard labor conditions tended to lead to labor disputes and strikes, and that when such strife disrupted businesses involved in interstate commerce, the flow of goods in commerce was itself



affected" (392 U.S. at 191). Congress expressly recognized that this line of analysis justifies establishing labor standards for public employees. As Senator Javits, a co-sponsor of the Senate bill, stated during the debates:

> "* * * [W]e are very resentful, very unhappy, when workers in the public domain threaten to strike. This is inevitably the result of the deep feelings that economic justice cannot otherwise be obtained, and I respectfully submit that we will go a lot further in getting tranquility in the labor field by giving them a minimum wage status and an overtime status than in almost any other way I can think of, and prevent the feeling on their part that the only way one can get justice is by rule of the jungle, to wit, by strikes and ceasing essential public service." (120 Cong. Rec. S. 2518, Feb. 28, 1974.)

While such a Congressional finding is unnecessary (see *Katzenbach* v. *McClung*, 379 U.S. 294, 304; *Maryland* v. *Wirtz*, 392 U.S. at 190, n. 13), it buttresses the conclusion that there is a rational basis, quite aside from the existence or nonexistence of competition with private industry, for bringing public employees within the FLSA.

The League argues that "[f]ederal officials have * * * admitted that the 1974 Amendments irrationally usurp State and City decision-making, protected by the Tenth Amendment" (NLC J.S. 28-29). Of course, the statements of President Nixon and Secretaries Hodgson and Brennan which it quotes (*id.* at 25-27, 29), opposed expansion of coverage not on constitutional grounds, but as a matter of policy.

c. Appellants are especially critical of Congress' decision to provide the protections of the Fair Labor Standards

Act to fire fighters and employees engaged in law enforcement. In fact, Congress expressly dealt with and went far to accommodate the concerns of local governments in this respect, by virtue of § 6(c)(1)(A) of the 1974 Act, which provides special means for computing overtime performed by these employees.[8] That appellants' objections to the standards which Congress did impose are without constitutional significance is established by what was said in *Maryland* v. *Wirtz* in disposing of an almost identical argument.[9]

f. The League raises the question whether the Eleventh Amendment forbids suits to recover unpaid compensation required by the FLSA. In *Maryland* v. *Wirtz*, this identical issue was held to be inappropriate for adjudication in a declaratory judgment action. 392 U.S. at 200.

g. The pervasive deficiency in the jurisdictional statements is that they advance no principled distinction, no rational line of demarcation, between the holding that em-

[8] See H. Conf. Rep. No. 93-953, 93d Cong., 2d Sess., pp. 26-27.

[9] Mr. Justice Harlan wrote:

> "In the court below, Judge Thomsen was troubled by the application of the overtime provisions to school and hospital personnel, who may have different arrangements for hours of work than employees of other enterprises. 269 F. Supp. at 851 Congress indicated its attention to this problem in 29 U.S.C. § 207 (1964 ed., Supp. II), which provides special means of computing hospital overtime. That this provision may seem to some inadequate, and that no similar provision was made in the case of schools, are matters outside judicial cognizance. The Act's overtime provisions apply to a wide range of enterprises, with differing patterns of work-time; they were intended to change some of those patterns. It is not for the courts to decide that such changes as may be required are beneficial in the case of some industries and harmful in others." (392 U.S. at 194, n. 22.)



ployees of public schools and hospitals may constitutionally be covered by the FLSA and the question whether the public employees affected by the 1974 Amendments may constitutionally be covered. Instead, appellants are driven to repeating the same arguments and slogans which were unpersuasive in *Maryland* v. *Wirtz*. It could not be otherwise: The proposition that the only public employees who are engaged in commerce are those in schools and hospitals could not be seriously maintained, and the question whether particular classes of employees are properly covered is a matter for case-by-case adjudication. See 392 U.S. at 201. As to those employees who *are* in commerce, appellants cannot escape from the basic proposition, reaffirmed in *Maryland* v. *Wirtz* (*id.* at 196-197):

> "But while the commerce power has limits, valid general regulations of commerce do not cease to be regulations of commerce because a State is involved. If a State is engaging in economic activities that are validly regulated by the Federal Government when engaged in by private persons, the State too may be forced to conform its activities to federal regulation."

Plenary review is not necessary to tell appellants once again that this Court will not "carve up the commerce power to protect enterprises indistinguishable in their effect on commerce from private businesses, simply because those enterprises happen to be run by the States for the benefit of their citizens" (392 U.S. at 198).

## II. *Maryland* v. *Wirtz* Should Be Followed.

As we have shown, appellants' challenge to the 1974 amendments as they affect public employees differs in no constitutionally substantial particular from the attack

against the 1966 amendments which was rejected in *Maryland* v. *Wirtz*. Thus, appellants cannot prevail if *Maryland* v. *Wirtz* remains the law. Neither appellant raises as a Question Presented for review whether *Maryland* v. *Wirtz* should be overruled; and, even if that question were candidly and squarely raised, it would not justify review of the judgment below.

a. The most persuasive evidence for the preservation of *Maryland* v. *Wirtz* as a precedent is the reasoning of Mr. Justice Harlan's opinion for the Court. It would unduly lengthen this memorandum were we to set forth even the major part of his lucid analysis. But in light of the dissent in that case, which was based on *New York* v. *United States*, 326 U.S. 572, which acknowledged limitations on the power of the federal government to tax state governments, it may be appropriate to recall that he quoted with approval from the unanimous decision in *United States* v. *California*, 297 U.S. 175, 185, the following language:

> "[W]e look to the activities in which the states have traditionally engaged as marking the boundary of the restriction upon the federal taxing power. But there is no such limitation upon the plenary power to regulate commerce. The state can no more deny the power if its exercise has been authorized by Congress than can an individual."

b. The League suggests (NLC J.S. pp. 23-24) that the *Maryland* v. *Wirtz* precedent has been undermined by "admissions" made by Justice Department attorneys in the presently pending case of *Fry* v. *United States*, No. 73-822. Insofar as that argument is based on the government's brief in *Fry*, it is an exercise in wishful reading. Far from abandoning *Maryland* v. *Wirtz*, that brief relies on that case as a controlling precedent,[10] and immediately after the sentence on which the League seizes, quotes from "the landmark decision of *Gibbons* v. *Ogden*, 9 Wheat. 1, 196, [where] the Court stated that the commerce power 'is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the constitution.' "[11]



However, the League is correct in stating that there was a departure from this position in the oral argument of government counsel in *Fry*. The following colloquy occurred (Tr. 30):

> Q. The rub comes from the fact that it may be that Congress can't exert the commerce power to the same extent against states as it can against private employers.
>
> Mrs. Lafontant: Well, there's no doubt about it, yes, because of the Tenth Amendment.

With all respect, it is clear that counsel erred.[12]

As Chief Justice Warren explained for a unanimous Court in *Sperry* v. *Florida Bar*, 373 U.S. 379, 403:

> "Congress having acted within the scope of the powers 'delegated to the United States by the Constitution,' [there the power to grant patent rights] it has not exceeded the limits of the Tenth Amendment despite the

[10] Brief of the United States, No. 73-822, pp. 16-17.

[11] *Id.* at 18.

[12] "This court is loath to attach conclusive weight to the relatively spontaneous responses of counsel to equally spontaneous questioning from the Court during oral argument." *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 170.

concurrent effects of its legislation upon a matter otherwise within the control of the State. 'Interference with the power of the States was no constitutional criterion of the power of Congress. If the power was not given, Congress could not exercise it; if given, they might exercise it, although it should interfere with the laws, or even the Constitution of the States.' II Annals of Congress 1897 (remarks of Madison). The Tenth Amendment 'states but a truism that all is retained which has not been surrendered.' United States v. Darby, 312 U.S. 100, 124; Case v. Bowles, 327 U.S. 92, 102. Compare Leslie Miller, Inc. v. Arkansas, 352 U.S. 187."

c. *Maryland v. Wirtz* did not declare new law. Rather, as the Court's opinion painstakingly developed, it applied to the FLSA a constitutional principle first declared in a unanimous decision by Mr. Justice Holmes,[13] and thereafter followed without deviation in case upon case. No argument of principle, indeed no slogan such as "state sovereignty," "government itself", "essential services", etc. which was advanced by the appellants in *Wirtz* had not been previously offered and rejected.

One of the present appellants, the State of California, has protested against the exercise of the commerce power to regulate its operations three times *as a party*,[14] yet neither that State nor the other appellants presented a single new thought on the constitutional issue. Accordingly, to grant yet another encore "would overtax an already burdened system of justice" (NLC J.S. p. 16).

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[13] *Sanitary District v. United States*, 266 U.S. 405.

[14] *United States v. California*, 297 U.S. 175; *California v. United States*, 320 U.S. 577; *California v. Taylor*, 353 U.S. 553.



## CONCLUSION

For the foregoing reasons the Government's motion to affirm should be granted.

Respectfully submitted,

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